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4                   UNITED STATES DISTRICT COURT  
5                   WESTERN DISTRICT OF WASHINGTON  
6                   AT TACOMA

7 ERIC LAWRENCE WRIGHT,  
8  
9 v.  
10 CITY OF TACOMA, *et al.*,

11 Plaintiff,

12                   Defendants.

13 Case No. C08-5388RBL

14 ORDER DIRECTING PLAINTIFF  
15 TO SUBMIT AN AMENDED  
16 COMPLAINT OR SHOW CAUSE  
17 WHY MATTER SHOULD NOT  
18 BE SUMMARILY DISMISSED

19 This matter is before the court following receipt of Plaintiff's eight(8) pleadings filed in response to  
20 the Court's Order to Show Cause and Plaintiff's discovery motion (Doc. 17). The Court, having reviewed  
21 the pleadings and the balance of the record contained herein, does hereby find and ORDER.

22         (1) A complaint is frivolous when it has no arguable basis in law or fact. Franklin v. Murphy, 745  
23 F.2d 1221, 1228 (9th Cir. 1984). When a complaint is frivolous, fails to state a claim, or contains a complete  
24 defense to the action on its face, the court may dismiss an *in forma pauperis* complaint before service of  
25 process under 28 U.S.C. § 1915(d). Noll v. Carlson, 809 F.2d 1446, 575 (9th Cir. 1987) (*citing Franklin v.*  
26 Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984)).

27         (2) Previously the court identified two specific deficiencies with Plaintiff's Complaint (Doc. 7) –  
28 failure to properly plead a cause of action based on municipal liability and prosecutorial immunity. The  
1 court directed Plaintiff to show cause why the matter should not be dismissed, and in response, Plaintiff  
2 filed eight (8) separate pleadings (Docs. 9-16). Many new allegations and defendants are included in the  
3 various pleadings, including, but not limit to, certain police officers, claims related to improper police  
4 procedure, lack of proper police training, official misconduct, and unconstitutional court proceedings and  
5 procedures. Most, if not all, of Plaintiff's claims relate to an incident in July 2005, when his home was  
6 searched following a domestic violence report.

7         Significantly, Plaintiff's § 1983 complaint appears to call into question the validity of his

1 conviction and/or sentence. In June 1994, the United States Supreme Court held that "[e]ven a prisoner  
2 who has fully exhausted available state remedies has no cause of action under § 1983 unless and until the  
3 conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas  
4 corpus." Heck v. Humphrey, 114 S.Ct. 2364, 2373 (1994). The court added:

5 Under our analysis the statute of limitations poses no difficulty while the state challenges are  
6 being pursued, since the § 1983 claim has not yet arisen. . . . [A] § 1983 cause of action for  
damages attributable to an unconstitutional conviction or sentence does not accrue until the  
conviction or sentence has been invalidated.

7 Id. at 2374.

8 For instance, Plaintiff new claims include the allegation that Pierce County's court processes,  
9 procedures, and computer programs have denied his constitutional right to a speedy trial. In addition,  
10 Plaintiff is challenging the validity of the search of his home, which revealed a marijuana growing  
11 operation.

12 (3) Due to the deficiencies described above, the court will not serve the complaint. Plaintiff shall  
13 file an amended complaint, curing, if possible, the above noted deficiencies, or show cause why this  
14 matter should not be dismissed **by no later than September 22, 2008**. If an amended complaint is filed  
15 it should include all defendants and all claims in one single pleading. If an amended complaint is not  
16 timely filed or if plaintiff fails to adequately address these issues, the Court will recommend dismissal of  
17 this action as frivolous pursuant to 28 U.S.C. § 1915, and such dismissal will count as a "strike" under 28  
18 U.S.C. § 1915(g).

19 (4) Plaintiff's motion for discovery is **DENIED**. Plaintiff seeks a court order to obtain state court  
20 records related to his criminal case. Plaintiff has failed to make a proper discovery request against the  
21 non-party entity prior to filing the motion to compel discovery. In addition, the court notes that Plaintiff  
22 has failed to certify or otherwise state that he has attempted to resolve this issue with the defendant or  
23 other party without court assistance prior to filing the motion to compel discovery.

24 (5) The Clerk is directed to send plaintiff a copy of this Order and the General Order

25  
26 DATED this 25<sup>th</sup> of August, 2008.

27  
28 /s/ J. Kelley Arnold  
J. Kelley Arnold  
United States Magistrate Judge